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Supreme Court of the United States

OCTOBER TERM, 1932.

No. 388.

LETCHER SPICER, By SAM SPICER, Guardian and Committee, *Petitioner,*

vs.

J. BRYAN SMITH, Special Deputy Banking Commissioner and Liquidating Agent of Hargis Bank and Trust Company, *Respondent.*

RESPONDENT'S SUPPLEMENTAL BRIEF.

JESSE I. MILLER,
Counsel for Respondent.

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RESPONDENT'S SUPPLEMENTAL BRIEF.

Pursuant to permission of the Court granted at the conclusion of the oral argument, respondent submits herewith the following short supplemental brief.

As pointed out upon oral argument, the decisions of the four State courts upon which petitioner relies all grow out of certain *dictum* in the case of *Manning v. Spry*, 121 Iowa 191, which arose under Section 4747, Revised Statutes, a Civil War pension statute. The extreme latitude of the Iowa courts in construing Civil War pension legislation was called to this Court's attention, particularly the case of *Diamond v. Palmer*, 79 Iowa 578.

Respondent's view in the case at bar is supported by the following State cases:

State, ex rel Smith v. Shawnee County Commissioners, 132 Kan. 233, 294 Pac. 915 (Certiorari denied 283 U. S. 855, 75 L. ed. 1462).
Shippee v. Commercial Trust Company, 161 Atl. (Conn.) 775.
Puffenbarger v. Charter, 165 S. E. (W. Va.) 541.
United States Veterans Bureau v. Thomas, 156 Va. 902.

As to the Virginia case, upon which petitioner relies as supporting his view, it was pointed out on oral argument that this case in reality supports respondent's position. In this connection the Court's attention is invited to the following language of the Virginia court:—

> "The Veterans Bureau, *not having a direct beneficial interest in the estate of the incompetent*, may not be 'an interested party' in the limited or technical sense * * *."

but that the Bureau had a sufficient interest in the guardianship proceedings, because of the solicitude of Congress for World War veterans, to permit its classification as "an interested party" under the Virginia statute.

In addition to the foregoing, respondent's view is, of course, supported by the decision of the Court of Appeals of Kentucky in the case at bar.

The true significance of the several sections of the World War Veterans Act relied upon by petitioner as showing a legislative intent to retain title to war risk insurance and compensation in the United States is, it is believed, most aptly stated by the Connecticut court as follows:—

> "These and other analogous provisions of the Act evidence the solicitude of the Congress for the welfare of the veteran who has become mentally incompetent

to manage his own affairs and an intention to safeguard the payment to him of the compensation and disability benefits to which he might be entitled under the Act so that they should not be dissipated or the veteran deprived in any way of their full benefit. We do not, however, find in the Act any intention, express or implied, that the title to the monies payable to him is to remain in the United States after they have been paid over to his conservator and until they have been actually paid into the hands of the ward or disbursed for his benefit." (*Shippee v. Commercial Trust Co., supra.*)

In addition to the foregoing supporting authorities, the Court's attention is invited to the further fact that the Comptroller of the Currency is charged with the duty of interpreting certain provisions of the World War Veterans Act in connection with insolvent *national* banks. The Comptroller has uniformly and consistently adopted the rule of the Kentucky court in the interpretation of these statutes. The construction placed upon them by an administrative officer charged with their execution is entitled to great weight. *Heath v. Wallace*, 138 U. S. 573; *United States v. Johnston*, 124 U. S. 236.

The practice and construction of the Comptroller of the Currency, as set out in an official communication from him to counsel for respondent, are printed herewith as an Appendix hereto.

Upon the foregoing, it is respectfully urged that the judgment of the Court of Appeals of Kentucky be affirmed.

Respectfully submitted,

JESSE I. MILLER,
Counsel for Respondent.

APPENDIX.

TREASURY DEPARTMENT

WASHINGTON

December 3, 1932.

Mr. Jesse I. Miller,
Attorney at Law,
Commercial National Bank Building,
Washington, D. C.

Dear Sir:

Pursuant to your request the office of the Comptroller of the Currency is submitting herewith its views on the question presented to the Supreme Court of the United States in the case of Smith v. Spicer's Guardian and Committee, 244 Ky. 68, 50 S. W. (2) 64, in which case the Supreme Court has recently granted a petition for writ of certiorari to the Court of Appeals of the State of Kentucky.

This department is concerned in the principal issue presented to the court in the case by reason of the fact that it is asserted by petitioner that money paid by the United States Government to the guardian of an incompetent as War Risk Insurance and Adjusted Compensation is money of the United States until it actually reaches the beneficiary, hence the fund is the subject of priority of payment to the guardian in the distribution of assets of insolvents by virtue of Section 3466 of the Revised Statutes of the United States. The interest of this office is lodged in the fact that should the Supreme Court of the United States determine such funds constitute money of the United States until it reaches the beneficiary such ruling will directly affect this office in similar cases where guardians' deposits in insolvent national banks are claimed, not as preferred but, as secured claims by reason of pledges of securities with the Treasurer of the United States to protect funds

of the United States in designated depositaries. We are not concerned from the standpoint of a preferred claim, since Section 3466 of the Revised Statutes of the United States is inapplicable in the distribution of assets of insolvent national banks by reason of its conflict with Section 5236 Revised Statutes of the United States (Section 194, Title 12 U. S. C. A.), which latter section requires the ratable distribution of assets of insolvent National banks to their creditors. See Cook County National Bank v. United States, 107 U. S. 445, to the effect that the provisions of the ratable distribution section exempt national banks, which have failed from the class of insolvent persons out of whose estates demands of the United States are to be paid in preference to other creditors.

Section 618, Title 38, United States Code Annotated, as amended July 3, 1926, provides as follows:

> "No sum payable under this chapter to a veteran or his dependents, or to his estate, or to any beneficiary named under Part V of this chapter, no adjusted service certificate, and no proceeds of any loan made on such certificate shall be subject to attachment, levy, or seizure under any legal or equitable process, or to national or state taxation, and no deductions on account of any indebtedness of the veteran to the United States shall be made from the adjusted service credit or from any amounts due under this chapter."

It has been necessary for this office to construe the effect of Section 618, Title 38, U. S. C. A., above quoted, in its relation to attachment, execution, taxation, and deduction for debts of funds of this character in national bank cases. We have consistently held on the question of the applicability of the foregoing Federal statute, (which we believe has more bearing on the immediate question before the court than the other Federal statutes cited by the attorney for the guardian,) to guardians' deposits in national banks, that said statute does not operate to give to the depositors

of a closed national bank any element of a preferred claim for the following reasons, first, that title to the funds pass from the Government upon payment, completely discharging the Government of its obligation, and second, that the funds then belong to the estate of the ward, and the debt is due to said estate, and not to the United States, and third, since the debt is not due to the United States, Section 3466 does not apply.

In 1882 the Supreme Court of Kansas in an opinion rendered by Mr. Justice Brewer, construed a similar section of an act of Congress, namely, Section 4747 Revised Statutes of the United States, passed March 3, 1873 (38 U. S. C. A. Section 54), and the reasons advanced by the court in a construction of that act apply equally in a construction of the statute above quoted. The effect of the holding in that case (Cranz v. White, 27 Kans. 319, 41 Am. R. 408) is that the protection extended under the terms of the statute is to an undelivered sum of money, applying to money due or to become due and not to money paid and in possession. The Supreme Court of the United States similarly construed section 4747 U. S. R. S. in McIntosh v. Aubrey, 185 U. S. 122, where the court established the definite rule, with respect to the application of that section, on funds paid under the Civil War Pension Act, that the exemption provided by the act protects the funds only while in the course of transmission to the pensioner that when the money has been paid to him it has "inured wholly to his benefit" and is liable to seizure as opportunity presents itself.

The Supreme Court of the State of Kansas in State ex rel. Smith, Atty. Gen. v. Board of Commissioners of Shawnee County, et al, 132 Kan. 233; 294 Pac. 915, construing the effect of section 454 (respecting Civil War Pension funds) Title 38 U. S. C. A., held that the intervention of a guardian does not leave pension funds still in the hands of the Government so that they are still "payable" or "due"

the ward as expressed by that section so as to exempt the funds from assessment, execution, and taxation, but, when paid to the guardian the title and possession have both passed from the Government, hence the exemption provided for by Section 454 is no longer applicable. By analogy, the view taken by the Court in the foregoing case is consistent with the ruling of this office respecting the application of Section 618, Title 38, U. S. C. A. It is our thought on this subject that the provisions of Section 618 apply only until title to the check or other credit instrument issued by the Government has passed from the payee or beneficiary, or when payment is actually made by the Government of the check issued under the service certificate, in the event no transfer of title of the credit instrument is effected but the check is immediately cashed. This view is supported by Martin v. Guilford County, 158 S. E. 847, and Lambert v. Guilford County, 158 S. E. 849, in which cases the court held that the World War veteran, receiving the money under the act of Congress, upon payment, acquired full and unrestricted title to the same, free from any control of the Government of the United States, and that section 618, Title 38 U. S. C. A. no longer applies. It will be noted, however, that neither of these cases are bank cases.

We have examined State v. First National Bank of Pawnee City, et al, 237 N. W. 623, 121 Nebr. 521; State v. Security Bank of Creighton, 121 Nebr. 515; Butler v. Cantley, 47 S. W. (2) 258; Anderson v. Olivia State Bank, 243 N. W. 398; Manning v. Spry, 121 Iowa, 191; U. S. Veterans Bureau v. Thomas, 136 Va. 902; Ramisch v. Fulton, 180 N. E. 735, and Smith v. Spicer, 50 S. W. (2) 64, all of which cases touch on the point presented, and while we believe that the better rule is that announced in Smith v. Spicer's Guardian and Committee, *supra*, it would appear that the question is one requiring the determination of the Supreme Court of the United States, in order to effect a uniform rule throughout the states. The reasoning adopted by the Court of Appeals of Kentucky is to the effect that payment by

the United States completely discharges its obligation to the soldier. In this circumstance the funds immediately pass from the possession and control of the Government and become the estate of the ward, thus eliminating the application of section 3466 Revised Statutes. The principle announced is supported by the fact that the debt of the bank is then due to the estate of the incompetent, not to the United States, and as such, is controlled solely by the laws of the state with respect to priority in the liquidation of state banks. As indicated, we believe the holding of the court in Smith v. Spicer's Guardian and Committee, *supra*, is a logical and reasonable answer to the guardian's contentions.

This office has adopted a like ruling on the additional ground that the unrestricted endorsement by the depositing checkholder passes title to the credit instrument and its proceeds, and the relation then created between the parties is that of debtor and creditor, on which construction we consider our position supported by City of Douglas v. Federal Reserve Bank of Dallas, 271 U. S. 489, where Mr. Justice Stone ably discusses the rule above announced. The doctrine established in City of Douglas case is consistent with Commercial National Bank v. Armstrong, 148 U. S. 50, to the effect that the fact of collection and actual credit of proceeds of a collection item creates the relationship of debtor and creditor, under which relationship title to the funds passes to the banker, following Marine Bank v. Fulton Bank, 2 Wallace, 252.

We have recently corresponded with the Veterans Administration on this subject, expressing our views, heretofore set forth, and by letter dated November 7th, 1932, the Solicitor for the Administration, J. O'Connor Roberts, Esq., advises us that their attorneys have been consistently instructed not to advise fiduciaries to claim preference in such cases on the grounds that such funds are funds of the United States. We are enclosing for such use as you may deem advisable a copy of the Solicitor's letter, in which he

relates the familiarity of their office with the decisions and statutes cited by the Comptroller of the Currency in that behalf. The contemporaneous construction placed upon a law by the officers charged with its administration, where uniform and long continued, will be given great weight by the courts in passing upon a statute so construed, and in case of doubt will be controlling. See Heath v. Wallace, 138 U. S. 573; United States v. Johnston, 124 U. S. 236; Brown v. United States, 113 U. S. 568; United States v. Moore, 95 U. S. 760; and Merchants National Bank v. United States, 42 Ct. Cls., 6. The fact that the Veterans' Administration and this office have construed the law as indicated, while in no way binding on the courts, is entitled to consideration.

It will be observed that the theory is advanced that the guardian who receives the money from the Veterans Administration is an officer of the United States. In this connection it is noted that the pleadings in the action lay no foundation to support argument based upon this premise, as the guardian does not bring the action as an officer of the United States, nor do the pleadings disclose that the United States is in any way concerned in the action. We conclude from this that the United States is not a party to the litigation, and is not concerned in the result. We would appreciate a copy of your brief in the Supreme Court, when it has been printed.

Yours very truly,

F. G. AWALT,
Acting Comptroller.

Inc.